No. 92-10-50

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1992

IN RE: RISK MANAGERS INTERNATIONAL, INC.; HERSCHEL HANCOCK, Individually and as Officer of RISK MANAGERS INTERNATIONAL, INC.; and CORPORATE UNDERWRITERS, LTD.,

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF MANDAMUS TO THE HONORABLE JOHN K. DIETZ, PRESIDING JUDGE OF THE 250TH JUDICIAL DISTRICT COURT OF TRAVIS COUNTY, TEXAS

APPENDIX H-M

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EDITOR'S NOTE

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PUBLISHER'S NOTE:

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VOLUME 5

NO. 471,568

THE STATE OF TEXAS	*	IN THE 299TH JUDICIAL
AND THE STATE BOARD	*	
OF INSURANCE	*	
	*	
VS.	*	DISTRICT COURT OF
	*	
RISK MANAGERS	*	
INTERNATIONAL, INC.,	*	TRAVIS COUNTY, TEXAS

- -

STATEMENT OF FACTS

- -

BEFORE:
THE HONORABLE JOHN K. DIETZ, JUDGE

- -

APPEARANCES:
MS. LINDA IBACH SHAUNESSY,
MS. KAREN PETTIGREW and
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- - - - - -

MR. TERRY SCARBOROUGH (Jenkens & Gilchrist),
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ATTORNEYS FOR THE DEFENDANTS

- - - - - -

BE IT REMEMBERED that on the 10th day of March, 1992 came on for hearing the above styled and numbered cause in the 250th Judicial District Court of Travis County, Texas before Honorable John K. Dietz, Judge, whereupon the following proceedings occurred.

MARCH 10, 1992
PROCEEDINGS

MS. SHAUNESSY: Good afternoon, Your Honor. We have several matters - the Turks & Caicos confidentiality law, the applicability of it, Mr. DeLeon has filed a motion for summary judgment on behalf of Corporate Underwriters as to whether or not worker's compensation insurance can be independently procured, and the State has responded.

And we have a deposition stipulation from Mr. Hancock's deposition because his answer was so long that we agreed to a stipulation, because it was ten lines for every answer and it was kind of expensive.

THE COURT: That's a great tactic when they're making you take the Fifth.

MS. SHAUNESSY: That's right.

THE COURT: Did they talk about Article I, Section 10 of the Texas Constitution, too?

MS. SHAUNESSY: Yes, we had it all.

THE COURT: Now, what else?

MS. SHAUNESSY: The financial discovery issue. And then lastly, I just need a couple of minutes of the Court's time, because we're contemplating --

THE COURT: Settling?

MS. SHAUNESSY: No. We're contemplating that we might have depositions in the Turks & Caicos, after the outcome of your ruling today. I just need a couple of points to clarify that.

MR. DeLEON: I'm going to say at the minimum. I think that's my best guess.

Now, let me be sure I understand what you're asking us to produce. You're not asking us to produce those documents which are being produced by other parties to this litigation. Is that correct?

Like for instance, you've ordered the production of claims files. You're not asking us to produce claims files that are already being produced. Is that right?

THE COURT: Okay. I cannot answer your question meaningfully unless I see the State of Texas' First Document Production Request to Corporate Underwriters, Limited, served on July the 3rd, 1991.

MR. DeLEON: Okay. I believe it is Items 7 and 8, Your Honor. That's what's here.

THE COURT: Let me rely back on my fact person. What is it that's in this document request that they have withheld? All of it?

MS. SHAUNESSY: Yes, Your Honor.

THE COURT: Okay.

MS. SHAUNESSY: But Your Honor, for a compromise for the State, Corporate could produce any document that they're not already producing.

In other words, if Risk Managers is going to produce File XYZ but Corporate also maintains the same file, in order to limit the in camera the State would be happy to have --

THE COURT: Only those non-duplicative items?

MS. SHAUNESSY: Right.

MR. DeLEON: That makes a difference.

THE COURT: Could I just see the document request?

MR. DeLEON: Sure. 7 and 8 are what they've requested.

MS. SHAUNESSY: And that's based on my assumption that Risk no longer is asserting the Turks & Caicos immunity.

MR. DeLEON: I'm not waiving that.

THE COURT: Time out. The Court is recognizing, pursuant to Rule 203, that there exists in the Turks & Caicos Islands, where the situs of Corporate Underwriters is and the domicile of Rashid Bodhanya -- and that it is the law of the Turks & Caicos Islands that they cannot meaningfully answer the discovery propounded by the State in its First Document Production Request served on July the 3rd, 1991, nor can they answer the State of Texas' First Set of Interrogatories served on July the 3rd, 1991, nor can they meaningfully respond to the State's Request for Admissions served on Corporate Underwriters on July the 17th, 1991, and that this is pursuant to the company's ordinance 1981 and the confidential relationships ordinance of 1979 of the Turks & Caicos Islands. And the Court, pursuant to Rule 203, has taken judicial notice of that law.

The Court, pursuant to the Texas Rules of Civil Procedure, 166(b)(4), is going to do an in camera inspection because the defendants, Corporate Underwriters, have asserted a privilege or an exemption from discovery.

MR. DeLEON: Your Honor, when we filed responses, so that the Court will be clear, we did agree to

provide certain of that information. I don't have those responses with me.

It is only with respect to the responses, which I will submit is the majority of those responses, that we would be providing the information in accordance with your ruling.

THE COURT: Here's what 7 and 8 are, which they say are the ones that are primarily germane. The State has requested in its document request all documents which are certificates of incorporation, bylaws and minutes of the board of directors' meetings of Corporate Underwriters. That's going to be submitted to me.

Then the State has requested any and all documents reflecting disbursements in cash, check or wire transfer between Corporate Underwriters and Risk Managers regarding the solicitation and/or procurement of insurance to any Risk resident located or to be performed in Texas.

MR. DeLEON: Your Honor, you may be confused, and it's my fault. When I said 7 and 8, I meant Tabs 7 and 8. You're focusing on Items 7 and 8.

THE COURT: Okay, so that it is much greater than that?

MR. DeLEON: Yes, Your Honor. And I'm sorry, I apologize for that.

THE COURT: 7 is this?

MR. DeLEON: Yes, Your Honor, Tab 7 and Tab 8.

MS. CURRAN: Your Honor, Tab 7 includes our answers to interrogatories and requests for production.

THE COURT: Okay.

MS. BARLOW-SPARKMAN: There were blanket objections, Your Honor, on the basis of the Turks & --

THE COURT: In good faith, you don't have to duplicate that which Risk Managers has already provided. But at some point after we're finished with all of this, one of the tasks that all of us will have to engage is to see where there are holes in the discovery, and then we'll try to address it on that basis.

So for instance, like in that one that I was looking at, if there are wire transfers out of that Interfirst account up in Dallas to the Turks & Caicos or some other oceanic bank and they had gotten that from Risk Managers -- because I suspect that they were behind that -- then you-all don't have to produce it.

But if they haven't gotten it, then you-all need to at least show it to me so that I can look at it and make my great weighing in the sky, and then see where we are.

MR. DeLEON: Okay.

THE COURT: Is that clear enough?

MR. DeLEON: Yes, Your Honor.

THE COURT: Okay. Now, when is that going to happen?

MR. DeLEON: I will get back to my client, and I will get an estimate for the Court as soon as I can.

THE COURT: When is our next date?

MS. SHAUNESSY: April 13th, Your Honor.

THE COURT: Okay. We need to be making progress on this.

MR. DeLEON: Could I produce something in writing to the Court? I'll do my best to get something within two weeks from today. Would that be acceptable to the Court?

THE COURT: You're going to submit something to me within two weeks?

MR. DeLEON: Yes, sir, telling you, "Yes, we can do it and this is the time frame when we can do it."

THE COURT: Yes, but I'm wanting that to happen before April because I've been holding the State back.

MR. DeLEON: Well, I understand. Two weeks would be -- that would be the 24th of March.

THE COURT: That's settlement week. Hector, do you think you might be able to let me know by the 20th?

MR. DeLEON: I can try, I sure can.

THE COURT: Do your best. If you can't, I'll understand. But do your best to let me know before settlement week.

MR. DeLEON: I will try to get something to you by the 20th.

THE COURT: Have we addressed everything we need to address on Turks & Caicos? Is the State satisfied?

MS. SHAUNESSY: Yes, Your Honor.

MS. BARLOW-SPARKMAN: Yes, Your Honor.

MS. SHAUNESSY: It's the State's understanding that Mr. DeLeon will provide to the Court when

he will answer the interrogatories, requests for production and requests for admissions, hopefully by the 20th.

THE COURT: And when he will submit them for an in camera inspection by the Court.

MS. SHAUNESSY: Right. But I understood that he doesn't know what date he's going to be able to do that, that he's just going to give you a letter by the 20th.

THE COURT: Right. Yes, ma'am.

MS. SHAUNESSY: Okay. So then we're all understanding.

THE COURT: Okay.

MS. SHAUNESSY: Now, Your Honor, I'm ready to go on to the next item. I believe it's the Hancock deposition stipulation.

Ms. Curran and I have sent letters back and forth, and we are in agreement with what the stipulation should be. But we would like to have it done in this form so that it will operate as a Rule 11 agreement so that Ms. Curran's client, Mr. Hancock, is not in any way harmed in the future, that the State won't in the future say that he did not perfectly state his Fifth Amendment objection.

But this is solely to save the time and expense of all parties, because his answer was quite lengthy. Would you like to state the stipulation?

MS. CURRAN: We state as our stipulation the following: Mr. Hancock will answer, "I invoke my Fifth Amendment privilege," period.

"I invoke my Fifth Amendment privilege" is defined as follows: "I invoke my Fifth Amendment privilege against

(Off-the-record.)

THE COURT: Well, Mr. Scarborough, this might surprise you. They did not squarely address, as was reported in the Consumer Law Report -- they didn't really confront whether trebling under the DTPA is analogous to any of this.

It wasn't even in the dicta. It just said they argued that. I guess you can't always believe what you read in those things.

(Off-the-record.)

MS. SHAUNESSY: Your Honor, I also have a case that shows that exemplary damages are the same as civil penalties, if that would help the Court.

THE COURT: Okay.

MS. SHAUNESSY: Well, you seem to be interested in the subject.

THE COURT: Okay. The guidance is that I'm not going to get caught in the income tax trap.

MS. SHAUNESSY: Your Honor, the State would go along with Sears, which says that -- in Sears versus Ramirez, in which the Supreme Court said income tax returns aren't required if other information is available that provides the same stuff.

In Sears they provided certified and audited financial statements and reports. That would be acceptable with the State.

These are the State's concerns. We have to assess premium taxes. Premium taxes are based on the total amount of consideration that was paid for insurance.

So I need that so we can establish and figure out the premium taxes that are owed.

Two, the State is concerned about monies that were spent for commissions or consultant fees, anything to like an agent or somebody in furtherance of the insurance transactions.

I'm also concerned because I would like to know the net worth so that I can understand if there are capital and reserves that are being put aside for payment of the claims or not, so I can see, you know, how the claims are being paid, what system is set up to pay the claims so I know, you know, if we're 20 years off from a disaster, two years, one year, whatever. I don't know that sort of thing.

So it's information that I would know their net worth so I know what obligations they have relating to the claims. If they can come up with a workable system, that's fine with the State. We just want the information.

And I, in fact, approached Ms. Curran before the hearing and asked her, would they be willing to provide some information. And Ms. Curran and Mr. DeLeon said no, and I didn't get a chance to talk to Mr. Scarborough.

The State just wants something in the middle. That would be fine. And if that doesn't work and if the information is not fine, then I can come back and ask for different information if I find that the information is not adequate. But we just need a start to solve those three problems.

THE COURT: I will give you-all a ruling, from my perspective, that the request for the trebled damages, et cetera, will be enough to justify the discovery of net worth.

And I will exclude tax returns and work papers, but we need other documents which constitute evidence of net worth from Hancock, RMI and CU, Limited.

Now, if you-all are preserving that to get the wise women and men over at 14th and Colorado to look at it, you may want to reduce that down into an order.

But that's my thinking, that what I'm prepared to do on the basis of what I've read and just my notion of what this is all about, is to extend Lunsford into this area that exemplaries and punitives are pretty much the same, and to the extent that the State has requested documents which reflect net worth other than -- and I'm not ordering the production of tax returns.

MR. DeLEON: Or work papers.

THE COURT: Or work papers at this time. Now, that's not to gainsay if somebody discovers fraud a little bit later on, that is something -- that it doesn't become more germane.

But with respect to the issue of what's the net worth, can they satisfy the penalties that are been applied, can they pay the premium tax that we're asking for, and those kinds of things, I'm not sure work papers of the income tax are directly relevant.

I don't see the connection. But that's not to say later on, through other discovery, that they could not become extremely important.

Yes, ma'am?

MS. SHAUNESSY: Your Honor, the State would request that they be required to answer the interrogatories or requests for them to disclose who their accountants are. I don't see how that's privileged.

There is no case that cites -- there's no accountant/client privilege in this state, and there is no case that says that that's not discoverable. I mean, they haven't put forth any evidence, either.

THE COURT: Well, I can't see it either, but I'm not wanting -- tell me what works best for you-all.

Do I need to address objections to discovery as we go along? Do I need to address them all at one time?

MS. SHAUNESSY: Well, I would be happy at this moment to have Corporate, Risk and --

THE COURT: When were those productions, et cetera, served and when were the answer dates and when did they pose the objection?

MS. SHAUNESSY: They were first served in July. We had one set of answers filed in August. I rewrote the questions to accommodate their concerns.

We served another set of them in August. They were due in September. They filed their answers to those in September, and then we brought those up for hearing before this Court. So sometime, I guess, in October would have been the production.

And at this point we haven't had production.

THE COURT: And Ms. Shaunessy, keeper of the schedule, have we set aside a date when we're going to address discovery objections?

MS. SHAUNESSY: Yes, Your Honor.

THE COURT: When?

MS. CURRAN: July 9th, Judge.

THE COURT: That's too far away.

MS. CURRAN: But Judge, we are addressing the discovery objections now.

And with regard to the bookkeeper, we're scheduled so that you know, to produce documents March 16th and 17th of closed files and the 21st and 22nd of next week for open files. So that is ongoing.

With regard specifically to the bookkeeper and accountant's name, we do not see how that is relevant information or would lead to the discovery of admissible evidence, especially in light of your ruling right now that we are to produce net worth.

MS. SHAUNESSY: If you would like the State to respond, I think that it is relevant, because I would like to know who did the calculations, and as far as the calculations, how they were done, what factors did they take in.

THE COURT: Yes. I'm not prepared to say that it's not calculated to lead to the discovery of relevant evidence, given the issues that might come about.

MS. SHAUNESSY: I think if we can just have a ruling on the accountants, then the rest I'll try to work out with Ms. Curran. And we can try to tentatively set --

THE COURT: If the objection with respect to the accountant and the bookkeeper is that it was not calculated to lead to the discovery of relevant evidence, that it was burdensome, harassing and undue expense, I'm overruling that objection and ordering the production of the names of the bookkeeper and the accountant.

With respect to the objections lodged on financial net worth, I think I've stated my ruling on that.

Anything else with respect to financial?

MR. DeLEON: There is one thing I do want to get on the record, Your Honor, with respect to net worth.

You were told that one of the reasons that they needed the net worth was to determine whether or not there were reserves posted and a system in place for the payment of claims.

Net worth by definition is not going to tell you that information, because --

THE COURT: That should be what's left over after you've done all that other stuff.

MR. DeLEON: Precisely. And I just wanted to be sure that that's on the record.

THE COURT: Right, and Mr. DeLeon, that didn't enter into my calculus.

MR. DeLEON: Okay. Thank you, Your Honor.

THE COURT: Okay, so now we're ready to address depositions.

MS. SHAUNESSY: Yes, Your Honor. If we have any depositions in the Turks & Caicos -- and I don't mind setting this for another date, since we're not sure yet about the document production or what's going to happen.

But if we do, I don't want to go to the Turks & Caicos Islands. But after reading the case law, I see that if I want to take particular people -- there's two cases on point and they said that if you want to take particular people, it depends on the convenience, whether or not you can make them come to your situs.

I presume that Mr. Bodhanya would say that it would not be convenient for him to come here. So I'm willing to go to the Turks & Caicos on the proviso that, before we go we know that they're either going to answer the questions or they're not going to answer the questions.

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

I, Ms. Betty Haygood, Official Court Reporter, 250th District Court, Travis County, Texas, do hereby certify that the above and foregoing record contains a true and correct transcription of all the proceedings directed by counsel to be included herein in Cause No. 471,568, all of which occurred in open court or in chambers.

I further certify that this transcription truly and accurately reflects the exhibits, if any, offered by the respective parties.

I further certify that costs for the preparation of the said transcript are in the reasonable sum of $276.50.

WITNESS MY HAND this the 23rd day of March, 1992.

\S\
Betty Haygood, CSR-RPR
250th District Court
Travis County, Texas

Certificate No. 471
Date of Expiration of Current Certification: 12/31/92
Business Address: P.O. Box 1748, Austin, Texas 78767
Telephone Number: 512/473-9321

NO. 471,568

THE STATE OF TEXAS and STATE BOARD OF INSURANCE, Plaintiffs,	§	IN THE DISTRICT COURT
VS.	§	
RISK MANAGERS INTERNATIONAL, INC.; HERSCHEL HANCOCK, Individually and as Officer of RISK MANAGERS INTERNATIONAL, INC.; NYLE LARGE, Individually and as Agent of RISK MANAGERS INTERNATIONAL, INC.; and CORPORATE UNDERWRITERS, LTD., Defendants.	§	OF TRAVIS COUNTY, TEXAS
	§	299TH JUDICIAL DISTRICT

ORDER DENYING DEFENDANT HERSCHEL HANCOCK'S MOTION FOR RECONSIDERATION

On the 13th day of April, 1992, came on to be heard the Motion for Reconsideration filed by Defendant Herschel Hancock concerning the Court's order of March 10, 1992 regarding the defendant Herschel Hancock's objections to the discovery requests propounded by the plaintiffs. Herschel

Hancock appeared herein through his counsel of record Alicia Curran. Plaintiffs appeared herein by and through their counsel of record, the Office of the Attorney General by Linda I. Shaunessy, Assistant Attorney General. The Court, having heard and considered argument of counsel, is of the opinion that such motion should be DENIED.

It is therefore ORDERED that Defendant Herschel Hancock's Motion for Reconsideration is hereby DENIED.

SIGNED this the 13th day of April, 1992.

/s/
JUDGE JOHN K. DIETZ
Presiding Judge

NO. 471,568

THE STATE OF TEXAS and STATE BOARD OF INSURANCE, Plaintiffs,	§	IN THE DISTRICT COURT
VS.	§	
RISK MANAGERS INTERNATIONAL, INC.; HERSCHEL HANCOCK, Individually and as Officer of RISK MANAGERS INTERNATIONAL, INC.; NYLE LARGE, Individually and as Agent of RISK MANAGERS INTERNATIONAL, INC.; and CORPORATE UNDERWRITERS, LTD., Defendants.	§	OF TRAVIS COUNTY, TEXAS
	§	299TH JUDICIAL DISTRICT

ORDER DENYING DEFENDANT RISK MANAGERS INTERNATIONAL'S MOTION FOR RECONSIDERATION

On the 13th day of April, 1992, came on to be hear the Motion for Reconsideration filed by Defendant Risk Mangers International, Inc. concerning the Court's order of March 10, 1992 regarding the defendant Risk Mangers International, Inc.'s objections to the discovery requests propounded by the

plaintiffs. Risk Managers International, Inc. appeared herein through its counsel of record Terry Scarborough. Plaintiffs appeared herein by and through their counsel of record, the Office of the Attorney General by Linda I. Shaunessy, Assistant Attorney General. The Court, having heard and considered argument of counsel, is of the opinion that such motion should be DENIED.

It is therefore ORDERED that Defendant Risk Managers International, Inc.'s Motion for Reconsideration is hereby DENIED.

SIGNED this the 13th day of April, 1992.

/s/
JUDGE JOHN K. DIETZ
Presiding Judge

NO. 471,568

THE STATE OF TEXAS and STATE BOARD OF INSURANCE, Plaintiffs,	§	IN THE DISTRICT COURT
VS.	§	
RISK MANAGERS INTERNATIONAL, INC.; HERSCHEL HANCOCK, Individually and as Officer of RISK MANAGERS INTERNATIONAL, INC.; NYLE LARGE, Individually and as Agent of RISK MANAGERS INTERNATIONAL, INC.; and CORPORATE UNDERWRITERS, LTD., Defendants.	§	OF TRAVIS COUNTY, TEXAS
	§	299TH JUDICIAL DISTRICT

ORDER OF MAY 27, 1992 REGARDING DEFENDANTS' MOTIONS FOR PROTECTIVE ORDER AND PLAINTIFFS' MOTIONS TO COMPEL DISCOVERY

On the 27th day of May, 1992, in the above-styled and numbered cause came before this Court The State of Texas and the State Board of Insurance ("plaintiffs") and Risk Managers International, Inc., Herschel Hancock, and Corporate

Underwriters, Ltd. ("defendants") and presented their arguments to several motions set before this Court. Plaintiffs and defendants appeared by and through their counsel of record. Counsel for Nyle Large had notice of the hearing but did not appear. The Court, having heard and considered argument of counsel, is of the following opinion:

It is hereby ORDERED, ADJUDGED and DECREED that:

1. Plaintiffs' Motion to Compel Herschel Hancock to Answer Deposition Questions filed on or about May 22, 1992 is hereby GRANTED in part specifically:

A. Hancock is hereby COMPELLED to answer the following deposition questions:

> 1. "Mr. Hancock have you ever before seen what's been marked as Exhibit 4?"
>
> 2. "Mr. Hancock, in your counterclaim you allege that the plaintiffs' suit is brought to prevent the sale of independently procured insurance that competes with the statutory worker's compensation insurance that plaintiffs regulate. What facts substantiate your claim made in Exhibit 4 that plaintiffs' suit is brought

to prevent the sale of independently procured insurance that plaintiffs regulate?"

3. "Mr. Hancock, what facts are known to you which substantiate your claim that plaintiffs knew that the independently procured workers' compensation insurance product offered by Corporate Underwriters, Limited, and the services offered by Risk Managers International, Incorporated, were not outside of the Texas rules of independently procured insurance?"

4. "Mr. Hancock, you state, and I will quote on Page No. 48 of your counterclaim quote, "The services offered by counter-plaintiff and Risk Managers International, Inc. were not outside of the Texas rules for independently procure insurance, and counter-defendants knew or should have known that the rules governing statutory workers' compensation are different than those for independently procured insurance providers," end of quote. What are all the facts that substantiate your claim that counter that the rules governing statutory worker's compensation are different than those for independently procured insurance providers?"

5. "Mr. Hancock, on page -- the bottom of Page 47 and the top of Page 48 of your counterclaim you have stated, and I will quote, 'Counter-defendants' suit is not brought to protect Texas employers or their employees, but instead to prevent counter-plaintiff from lawfully engaging in the lawful activities of risk management consulting and as third party administrator for Corporate Underwriters, Limited, which entity is an offshore insurance company incorporated and

lawfully operating under the laws and statutes of the Turks and Caicos Islands, British West Indies, that provides independently procured workers' compensation insurance that counter-defendants regulate.' What are all the facts that you know that support your statement that Risk Mangers International, Incorporated, lawfully operates as a risk management consultant and as a third-party administrator for Corporate Underwriters, Limited?"

6. Where is Corporate Underwriters, Limited, lawfully operating under the laws and statutes of the Turks and Caicos Islands, British West Indies?

7. Again, pursuant to our counterclaim on Page 48, what activities is Corporate Underwriters, Limited, engaged in that it is engaging in lawfully under the law and statutes of the Turks and Caicos Islands British West Indies?

8. What are all the facts that your know that support your counterclaim which is shown as Exhibit No. 4 before you?

10. Who are all of the people who would have relevant knowledge about of the facts and allegations that you assert in your counterclaim as evidenced by Exhibit No. 4?

11. What facts substantiate your claims that the State of Texas and the Texas Department of Insurance's lawsuit is frivolous, unreasonable and without foundation as stated in your counterclaim of Exhibit No. 4?

12. What are all of the facts that substantiate your counterclaim as demonstrated by Exhibit No 4 that the State of Texas and the Texas Department of Insurance acted maliciously, in bad faith and contrary to the law by obtaining the ex parte receivership?

13. Are there any other documents or facts that you rely on to support your counterclaim demonstrated in Exhibit No. 4?

B. Hancock is hereby COMPELLED to answer the following deposition question regarding only those documents which are not privileged pursuant to Rule 166b using the date of April 24, 1989 as the date on which litigation was anticipated:

9. What are all the document(s) that support your counterclaim which is demonstrated by Exhibit No. 4?

C. Hancock is hereby COMPELLED to answer interrogatory number 7 and the deposition questions on page 14 of his deposition relating to his current and previous addresses, specifically:

INTERROGATORY NO. 7 State the complete address (street address, city, county and state) of each place where you have lived since January 1, 1985 to the present.

D. Hancock is hereby COMPELLED to answer the following interrogatory only through April 24, 1989:

> *INTERROGATORY NO. 13* Identify all accountants and/or bookkeepers retained by Herschel Hancock from January 1985, through the present.

E. Hancock is hereby COMPELLED to answer the following deposition questions:

> 13. Have you ever heard of Transworld Reinsurers, Limited?
>
> 14. If so, what is Transworld reinsures, Limited?
>
> 15. Where is Transworld Reinsurers, Limited located?
>
> 16. Does Transworld Reinsurers, Limited, reinsure risk underwritten by C.U.?
>
> 17. What lines of insurance that C.U. sells does Transworld Reinsurers, Limited, reinsure?
>
> 18. What is the financial status of Transworld Reinsurers, Limited?
>
> 19. What insurance policies issued by C.U. has Transworld Reinsurers, Limited, had to pay claims on?
>
> 35. I'd like to turn now to the federal lawsuit Cause No. CA3-91-1090-D, which is styled Risk

Managers International, Inc., Herschel Hancock and Corporate Underwriters, Limited, versus the State of Texas, et al. Who on behalf of RMI authorized the filing of this lawsuit?

36. Who on behalf of RMI authorized the filing of the above stated lawsuit?

37. Why are you, Herschel Hancock suing the State of Texas in the case of CA3-91-1090-D?

38. So when I say the federal lawsuit, Mr. Hancock, I'll be referring to that. Why is RMI suing the State of Texas in the federal lawsuit?

39. What acts do you believe the State of Texas or any of its officers or agents has committed against you in the federal lawsuit?

40. What acts do you assert that RMI has committed -- I'm sorry -- what acts do you assert that the State of Texas or any of its officers or directors has committed against Risk Managers International, Incorporated?

41. Why are you suing the State Board of Insurance in the federal action?

42. What acts do you state that the State Board of Insurance has committed against you in the federal lawsuit?

43. What acts do you state that the State Board of Insurance has committed against RMI in the federal lawsuit?

44. What acts has Dan Morales as attorney general committed against in the federal lawsuit.

45. What acts do you state that Stephen Durish has committed against you in the federal lawsuit?

46. What acts do you assert that Linda Shaunessy has committed against you in the federal lawsuit?

47. What acts does RMI assert that Linda Shaunessy as an assistant attorney general has committed in the federal lawsuit.

2. Plaintiffs' Motion to Compel Herschel Hancock to Answer Deposition Questions is hereby DENIED in part, specifically:

A. Hancock's assertion of his Fifth Amendment privilege as to the following interrogatory is hereby SUSTAINED:

INTERROGATORY NO. 14: For each accountant and/or bookkeeper identified in interrogatory no. 13, state the exact purpose for which they were retained, such as, but not limited to, preparation of federal income tax returns, audits, financial statements, etc.

B. Further, the Court recognizes Hancock's assertion of Fifth Amendment privilege with respect to

the following deposition questions and therefore, this Court does not compel Hancock to answer the following questions:

1. Does the prospective insureds send their letter requesting a premium price quotation to RMI?

2. Does the prospective insured receive a letter back with a premium price quotation from C.U.?

3. Does the prospective insured receive a letter back with a premium price quotation from RMI?

4. How does the prospective insured inform C.U. as to whether the prospective insured will accept or not accept the insurance coverage as quoted?

5. Does RMI manage claims administration and losses on behalf of C.U.?

6. If so, how long has RMI done this?

7. Does RMI or any of its employees, agents or representatives have the authority to pay any claims under a Corporate Underwriters, Limited, policy?

8. How long has RMI been adjusting claims on behalf of C.U.

9. Why has RMI not filed claims forms the required claims forms with the stamping office when it adjusts a claim for corporate Underwriters, Limited?

10. Where are claim checks to injured workers or to insureds issued from?

11. If claim checks are issued from RMI's office in Dallas, why is this so?

12. On whose bank account are claims checks drawn?

20. Does RMI charge an administrative fee to C.U.?

21. Did RMI ever receive premium payments from Aleman Food Service for the workers' compensation insurance or the automobile liability from January 1st, 1985, to the present?

22. Has RMI ever mailed or hand-delivered an insurance policy issued by C.U. to ATRA Corporation or a representative of ATRA Corporation?

23. Has RMI ever collected any money from ATRA Corporation that would be money paid to an insurance consultant?

24. Has RMI ever disseminated any information to ATRA Corporation relating to the type of insurance coverage which ATRA Corporation had with C.U.?

25. Has RMI ever adjusted any claims or losses on an insurance policy that listed C.U. as the insurer and ATRA Corporation as the insured?

26. Has RMI ever investigated any claim or loss on an insurance policy that listed C.U. as the insurer and ATRA Corporation as the insured?

27. Has RMI ever received any insurance premiums from Benecorp?

28. Has RMI ever collected any money from Benecorp that would be paid to an insurance consultant?

29. Has RMI ever disseminated any information to Benecorp relating to the rates that Benecorp would be charged if Benecorp purchased insurance from C.U.?

30. Has RMI ever adjusted any claims or losses on an insurance policy that listed C.U. as the insurer and Benecorp as the insured?

31. Has RMI ever investigated any claim or loss on an insurance policy that listed C.U. as the insurer and Berryman as the insured?

32. Has RMI ever investigated any claim or loss on an insurance policy that listed C.U. as the insurer and Bollinger as the insured?

33. Has RMI ever received any insurance premiums from Beneficial Personnel Services of Texas, Incorporated?

34. Has RMI ever received an insurance -- any insurance premiums from Cabaj Enterprises, Incorporated?

3. Plaintiffs' Motion to Compel Verification and Signing of Risk Managers International, Inc.'s Second Amended Responses to the State of Texas' Amended Interrogatories and Document Production Request filed on or about May 22, 1992 is hereby DENIED;

4. Plaintiffs' Motion for Order Enlarging the Number of Interrogatories filed on or about May 22, 1992, as agreed by the parties is hereby GRANTED, and therefore Plaintiffs may request 30 additional answers of any defendant who maintains a counterclaim as of June 1, 1992;

5. Risk Managers International, Inc.'s Motion for Protective Order filed on or about May 18, 1992 is hereby DENIED;

6. Plaintiffs' Response to Risk Managers International, Inc.'s Motion for Protective Order and Plaintiffs' Motion to Compel filed on or about May 22, 1992 with regard to the production of the following documents and computer

records relating to the following topics is hereby GRANTED and Risk Managers International Inc. is ordered to produce: (1) all certificates of insurance, (2) requests for certificates of insurance, (3) approvals from CU to RMI to issue certificates of insurance, (4) bank records, (5) bank statements, (6) net worth, (7) reserve limits, (8) loss ratios, (9) premiums (received, owed, and billed), (10) banking logs, (11) correspondence between RMI and CU, (12) current claims runs, (13) current loss runs, (14) claims deposit accounts, (15) cost plus billing report, (16) monthly billing statements, (17) installment agreements, (18) list of how much to bill each month, (19) salaries, (20) compensation to any employee, or consultant of RMI, (21) audits, (22) names of accountants, (23) balance sheets, (24) annual statements, (25) capital, (26) reserve, (27) assets available for payment of any claims, (28) telephone bills, (29) facsimile transmissions between CU and RMI, and (30) wire transfers or funds sent between CU and RMI or RMI and CU.

7. It is FURTHER ORDERED that RMI shall produce to plaintiffs any and all documents responsive to any outstanding discovery requests no later than June 15, 1992;

SIGNED this the 12th day of June, 1992, NUNC PRO TUNC May 27, 1992.

/S/
JUDGE JOHN K. DIETZ

AGREED AS TO FORM:

/S/
LINDA I. SHAUNESSY
ATTORNEY FOR PLAINTIFF

/S/
TERRY SCARBOROUGH
ATTORNEY FOR DEFENDANT, RISK MANAGERS INTERNATIONAL, INC. AND HERSCHEL HANCOCK AS PRESIDENT OF RISK MANAGERS INTERNATIONAL, INC.

/S/
JOHN BARR
ALICIA CURRAN
ATTORNEYS FOR DEFENDANT HERSCHEL HANCOCK

/S/
HECTOR DeLEON
ATTORNEY FOR DEFENDANT CORPORATE UNDERWRITERS, LTD.

[LIS\CORPUNDR\ORDMAY27]

VOLUME 8
NO. 471,568

THE STATE OF TEXAS	*	IN THE 299TH JUDICIAL
AND THE STATE BOARD	*	
OF INSURANCE	*	
	*	
VS.	*	DISTRICT COURT OF
	*	
RISK MANAGERS	*	
INTERNATIONAL, INC.,	*	
ET AL.	*	TRAVIS COUNTY, TEXAS

- -

STATEMENT OF FACTS

- -

BEFORE: THE HONORABLE JOHN K. DIETZ, JUDGE

- -

APPEARANCES:

MS. LINDA IBACH SHAUNESSY and
MS. DIANE BARLOW-SPARKMAN,
Assistant Attorneys General,
P.O. Box 12548, Austin, Texas 78711-2548

ATTORNEYS FOR THE PLAINTIFF

- - - - - -

MR. TERRY SCARBOROUGH and MR. BILL BRYANT
(Jenkens & Gilchrist),
600 Congress, Suite 2200, Austin, Texas 78701

MR. THOMAS P. WASHBURN
(DeLeon, Boggins & Richards),
480 Austin Centre, Austin, Texas 78701.

MR. JOHN BARR and MS. ALICIA CURRAN
(Burt, Barr & Associates),
304 South Record Street, Dallas, Texas 75202

ATTORNEYS FOR THE DEFENDANTS

- - - - - -

BE IT REMEMBERED that on the 8th day of June, 1992 came on for hearing the above styled and numbered cause in the 250th Judicial District Court of Travis County, Texas before Honorable John K. Dietz, Judge, whereupon the following proceedings occurred.

DIRECT EXAMINATION

QUESTIONS BY MR. BARR:

Q Would you state your name, please, ma'am?

A My name is Monica P. Tumminello.

Q Ms. Tumminello, at the time in September of 1989, were you employed by a company known as Risk Managers International in Dallas, Texas?

A Yes, I was.

Q And were you present on the day that the receivership was served, that Friday afternoon?

A Yes.

Q Can you tell the Judge specifically what happened that day with respect to the books and records of Risk Managers International?

A Well, they came in and said that they were just virtually taking over the office and we were to cooperate with them and give them the books and keys and so on.

Q Did they ask to search your purse and the purses of the other women working there?

A Yes.

Q Did they consume your food goods; that is, personal goods of yours, your candy and your oven-top dinners and things of that nature?

A Yes.

Q Did you witness them telecopy documents from your office to another office?

A Yes.

Q Did they break open filing cabinets of Herschel Hancock, personal filing cabinets of Mr. Hancock?

A Yes.

Q Did they take documents belonging to Herschel Hancock individually and telecopy those documents to third parties?

A Yes, they did.

Q Did they make copies of these documents on the photocopy machine, box them and remove them?

A Yes.

Q Did they ask you and other employees of RMI to sign a statement that said that you now worked for the State of Texas and that you were to be removed as employees for Risk Managers International?

A That's correct.

Q Now, can you tell the Judge, is Risk Managers International located in a building?

A An office building, yes.

Q And that's in Dallas County, Texas?

A That's correct.

Q And it's a physical building attached to land, is it not?

A Yes.

Q And did they change the locks and exclude you folks from the premises?

A Yes, they did.

Q Did you or anybody at RMI, Herschel Hancock or anybody else, consent to these actions?

A No.

Q Did you overhear the receiver tell folks that would call in on the phone that RMI was out of business?

A Yes, I did.

Q You personally heard this?

A Yes, I did.

Q Did you personally observe these receiver folks take and open mail addressed personally to Herschel Hancock?

A They took all the mail.

Q And did they open it?

A Yes.

Q And did you consent, or did anyone consent to their doing this activity?

A No.

Q Did they enter your computer files at RMI and attempt to copy the computer records?

A Yes, they did.

Q Did anyone consent to that activity?

A No.

Q Did the defendants take business supplies and business file folders and copy paper and use that to facilitate the copying of documents which they were transporting to some third party?

A Yes, they used our supplies.

Q Did you give them permission to use your long distance, telefax machine or anything else?

A No.

Q Did anyone at RMI give them permission to use those machines?

A No.

Q I believe you testified that they took your food that was in the icebox. Was that the food of the personnel that worked there?

A Yes.

Q Did anyone give them permission to eat the TV dinners and things that belonged to you folks individually?

A No.

Q And were you compensated for this material that was taken?

A No.

Q Did they show you any document that gave them any right to open your purse or search your body or go through your purse or personal belongings?

A No.

MS. BARLOW-SPARKMAN: Objection. It has not been the witness' testimony that anything other than her purse was searched.

THE COURT: Ma'am, when they asked to search your purse, did you tell them okay?

THE WITNESS: No, I didn't, but some people in the office did.

THE COURT: Did they look in your purse?

THE WITNESS: Not in mine, they didn't.

THE COURT: Okay.

BY MR. BARR:

Q Did they look in other folks' purses?

A Yes, they did.

Q Did they show you any search warrants to allow them to do that?

MS. BARLOW-SPARKMAN: Objection. This is hearsay. She has already testified that she did not consent to their searching of her purse, so they did not search her purse.

THE COURT: I know, but the question is what did she see, so the objection is overruled.

You may answer.

BY MR. BARR:

Q So all I'm asking you is if you were present and what you observed. Did you observe them take women's purses and go through them?

A Yes, I did.

Q And did anyone consent to this activity?

A Not that I'm aware of.

MS. BARLOW-SPARKMAN: Objection, hearsay.

BY MR. BARR:

Q Did you see them bring an armed guard into the premises with a pistol and stick the pistol down on the top of the desk and put his feet up on the desk of the business?

A Yes.

Q When they changed the locks to the business, did they give anyone that worked there a key to it?

A No.

Q Did they take your paycheck from you that had been given to you for services that you had rendered to the company?

A Yes, they did.

Q Do you know what authority they had to take your paycheck away from you?

A No.

Q Did they take the paycheck of the other employees away?

A Yes.

Q Did they enter other folks' offices that were contiguous with RMI, that had interlocking locks but that were separate offices of persons other than RMI?

A I'm not sure.

THE COURT: Could I take just a very brief recess?

(Brief recess.)

MR. BARR: We pass the witness, Your Honor.

THE COURT: Any questions of this witness?

MS. SHAUNESSY: Yes, Your Honor.

CROSS-EXAMINATION

BY MS. SHAUNESSY:

Q Ms. Tumminello, do you have a stamp in your office that states "Corporate Underwriters, Limited" and has a date on it?

A Yes, for the mail. Yes.

Q Okay. When you open the mail, how do you stamp the pieces of mail that come in?

A I just stamped them with the date. And like you said, it does have 'Corporate Underwriters" on the stamp.

Q And where are you physically -- where do you work?

A Right at the very front office.

Q What company do you work for?

A RMI.

Q Which is also known as Risk Managers International, Incorporated?

A Yes, I'm sorry. Risk Managers International, yes.

Q So all the mail that comes in to Risk Managers International, Incorporated then you stamp with a stamp "Corporate Underwriters, Limited?"

A (Witness nodded affirmatively.)

Q Is that a "yes?"

A Yes.

Q Okay. Are you aware or do you know if Corporate Underwriters, Limited has a certificate of authority to conduct the business of insurance in the state of Texas?

A I'm not sure.

Q Okay. Has anyone ever told you that Corporate Underwriters, Limited can sell insurance in Texas?

A No.

Q Okay. Do you know if Risk Managers International, Incorporated has authority to conduct the business of insurance in Texas?

A I'm not sure.

Q Okay. Has anyone ever told you if Risk Managers International, Incorporated can conduct the business of insurance in the state of Texas?

A No.

Q Do you ever mail out and issue commission checks to insurance agents who sell insurance policies where Corporate Underwriters, Limited is the insurance company and where the insured is located in Texas?

MR. BARR: I object to the relevancy of this inquiry in this motion, Your Honor.

THE COURT: The objection is overruled.

BY MS. SHAUNESSY:

Q You may answer the question, Ms. Tumminello.

A Could you repeat some of it again, the main part of it?

Q Certainly.

MS. SHAUNESSY: I'll ask the Court Reporter--

THE COURT: Do you ever mail out commission checks to insurance agents because they have sold some policies, where Corporate Underwriters is the underwriter?

THE WITNESS: Yes, I do mail out checks.

BY MS. SHAUNESSY:

Q Okay. Do you mail out commission checks to Jim Maley?

A Yes.

Q Do you mail out commission checks to Jim Maley for insurance policies that he has sold where Corporate Underwriters, Limited is the insurance company?

MR. SCARBOROUGH: I object to the form of the question. I'm not sure the witness is competent to testify as to what they are.

And the phrasing of the question, Judge - it's a term of art, and the fact that she mails out checks is different from what they might be.

BY MS. SHAUNESSY:

Q Ms. Tumminello, in your job, what do you do in relation to commission checks?

A Well, I mail them.

Q Who writes or fills out the commission checks?

MR. SCARBOROUGH: Your Honor, I have the same objection because what they're called is a term of art, and I object to that. And I would like a running objection to it.

THE COURT: Excuse me. What do you-all call them?

MS. SHAUNESSY: Your Honor, in the --

THE COURT: Excuse me. What do you call them?

THE WITNESS: Consulting fees.

THE COURT: Consulting fees, okay. So just rephrase your question about consulting fees.

BY MS. SHAUNESSY:

Q Ms. Tumminello, who physically writes the consulting fee checks?

A Hugh Thompson.

Q Who physically writes the consulting fee checks today?

A Hugh Thompson.

Q Do you have any involvement in writing the consulting fee checks?

A No.

Q Who figures out how much is due to the insurance consultants in fees?

A Hugh Thompson.

Q How does Mr. Thompson figure out how much is due in the consulting fee?

A I'm not sure. He has something that he goes by. I'm not sure.

THE COURT: Do you know anything about how he does that?

THE WITNESS: I'm not really that familiar with it.

THE COURT: Do you participate in it? Do you help him?

THE WITNESS: I see the checks.

THE COURT: You see the end result. But as to how he comes up with that, do you participate with that?

THE WITNESS: Not really, no.

THE COURT: Okay. The witness has indicated a lack of personal knowledge under 602. Let's move on.

BY MS. SHAUNESSY:

Q Ms. Tumminello, have you ever seen any insurance policies in the offices of Risk Managers International, Incorporated?

A Not really. I don't work in that part of it at all, so I can't say that I have honestly seen any.

Q Who are all the employees at Risk Managers International, Incorporated?

A Who are all of them? You need their names?

Q Yes, ma'am.

A There's Brenda Gardner, Angela Deaton, Sandra Newton. We have three new people. We have Lorenzo Villanova. We have Diane Castro. These are new people.

And we have Cassy Lippit, I think is the last name; and Rebecca Schllikher, S-c-h-l-l-i-k-h-e-r, I believe.

Q Has Mr. Herschel Hancock ever been an employee of Risk Managers International, Incorporated?

A I'm not sure.

Q Does Mr. Herschel Hancock have an office located in the offices of Risk Managers International, Incorporated?

A He has an office in there, yes.

Q Have you ever seen any checks signed by Mr. Herschel Hancock?

A Personally signed? No.

Q Have you seen any checks signed by Mr. Herschel Hancock in a computer form or with a computer script?

A I have the check signer that I use.

Q Okay. Explain to me what the check signer is.

A It just basically stamps the checks.

Q What does the stamp stamp the checks with?

A It has "Herschel Hancock."

Q So are checks stamped with Herschel Hancock's signature?

A Yes.

Q Do you stamp checks with Herschel Hancock's signature?

A Yes.

Q What kind of checks do you stamp with Herschel Hancock's signature?

A Paychecks and company expenses.

Q Whose account are the checks written off of?

A RMI's.

Q Are there any checks written off the accounts of Corporate Underwriters, Limited?

A Other than the consulting fees, no.

Q What account are the consulting fees checks written off of?

A Corporate Underwriters'.

Q Who stamps the signature on the consulting fee checks?

A I do.

Q Whose name is stamped on the Corporate Underwriters checks?

A Herschel Hancock's.

Q So it would be correct to say that Mr. Hancock's stamp goes on the check for both the Risk Managers International, Incorporated accounts and Corporate Underwriters, Limited accounts.

A Yes.

Q Who is Fred Goad?

A He's a former employee.

Q What job did Fred Goad perform at Risk Managers International, Incorporated?

A He was in the claims department.

Q What functions did Mr. Goad perform in the claims department?

THE COURT: Okay, time out. What are we doing here?

MS. SHAUNESSY: I'm just going to show how much involvement the two companies have together, because there's been some assertion, I guess, on the other side that --

MS. BARLOW-SPARKMAN: And Your Honor, we are here also on a Rule 13 motion that the --

THE COURT: Well, but the Rule 13 motion is based on that at the time that you-all applied to the District Court of Travis County for receivership, you did not have the facts.

What I hear in the inquiry is that several years later we're finding out the employee constituents of RMI/CU, and we're not here for a deposition.

And I don't see that this is responsive to their Rule 13 motion. It does not appear to be.

Anything else?

MS. BARLOW-SPARKMAN: Your Honor, I'm surprised that they would put this witness on the stand. I'm still a little perplexed --

THE COURT: Surprised? You're thankful, grateful. Right?

MS. BARLOW-SPARKMAN: Yes, I'm grateful that she has been on the stand. The Third Court of Appeals has already upheld the temporary restraining order.

MR. BARR: Judge, is this an objection?

THE COURT: I don't know what we're doing. I've just told you that your questions do not appear to be relevant to the motion that's on my table right now, and I've asked that you-all move on to something that is relevant.

MS. BARLOW-SPARKMAN: We're prepared to move on.

BY MS. SHAUNESSY:

Q What was the cost of the food goods that you believe were taken during the receivership period?

A I couldn't put a cost on it.

THE COURT: Well, let's get back. How many of these dinners and how many candy bars? I mean, if you had to go out to the grocery store and buy the replacements, how much do you think you would spend on all that the people from the Attorney General's Office and the receiver's office and everybody consumed up that day?

THE WITNESS: Well, the coffee and candy and stuff, I don't know, I would say maybe 30 or $40.

THE COURT: Okay.

BY MS. SHAUNESSY:

Q How many people were on site from the receiver's office, on site at Risk Managers International, Incorporated?

A How many people were working there? Is that your question?

Q Yes, ma'am.

A I would say probably six.

Q How many employees from the State of Texas came to Risk Managers International's office during the receivership time?

A I think there was four.

Q And could you state the names of the people who came?

A I think Jimmy Clark was one. There was one fellow by the name of Nicholas, I believe, that I distinctly remember. He was very threatening.

And there was an attorney, I believe. I can't remember his name. And then there's a lady that came in later on.

Q Do you have a copy of the document that you said that you signed stating that you became a State employee?

A I didn't sign it.

Q Do you know anybody -- do you have a copy of what was presented to you indicating that you were a State employee?

A No.

Q Do you recall what the document said?

A No.

Q Do you recall who gave you the document?

A Not really, no.

Q What personal documents of Mr. Hancock were telecopied to another source by the receiver's employees?

A I don't have personal knowledge of what documents were copied, but I did see them going through his desk.

Q How did the receiver break into the file cabinets?

A They virtually asked for all the keys.

Q So your testimony is that they broke into the file cabinets by asking for the keys and using the keys to unlock the file cabinets?

A Yes.

Q Okay. Did you ever receive your paycheck that the receiver's employees took from you?

A No, they had cut the signature off.

Q Did you receive a new check from the receiver's employees?

A From the receiver's -- oh, okay. Yes, later on. Yes.

MS. SHAUNESSY: That's all, Your Honor.

THE COURT: Any redirect?

MR. SCARBOROUGH: No.

THE COURT: Thank you, ma'am. You may step down.

(Witness excused.)

MR. SCARBOROUGH: I would like to call Angela Deaton to the stand.

MS. BARLOW-SPARKMAN: Objection, Your Honor. The witness has not testified as to why he would have personal knowledge of such things.

Furthermore, once again, what is the purpose of Mr. Barr's testimony here? What aspect of the motion are we now addressing?

THE COURT: I understand the relevance. And if you can, just briefly gloss over as to how he has acquired personal knowledge of it.

BY MR. SCARBOROUGH:

Q We were getting there, but let's skip to that point.

How do you know, or have personal knowledge that the records seized were part of the records in this case?

A They asked for all the records in the underlying subpoena action in March of '89. And if they asked for all the records, I presume that's all the records.

I have no knowledge of what records exist out there at that business or what records don't exist. I just know that the documents they asked for then are the same documents they're asking for now.

Q And did they produce and was there a hearing after -- well, let me back up to get it chronological.

After that supersedeas bond was approved and the case was on appeal -- and were you and Hector DeLeon involved as attorneys at that point in time?

A That's accurate.

Q And was that before I became an attorney of record in the case?

A That's accurate.

Q Now, this proceeding that we're here on in 471,568 started, the record will reflect, with an application for receivership and a TRO presented ex parte?

A That's accurate.

Q Were you or Mr. DeLeon consulted at all by Ms. Shaunessy or anyone on behalf of the Attorney General's Office before that was presented ex parte?

A We were not.

Q As a result of that ex parte order, was there a hearing to quash the receivership?

A There was.

Q And was that quashed?

A Yes.

Q And as part of the evidence, what was part of the evidence introduced in that receivership from the Attorney General?

A There is a stack of approximately eight inches in height of documents seized by the receiver at the offices of Risk Managers International, and those documents were objected to.

Q Were those portions of the documents which were on appeal in the other case?

A Absolutely they were.

MR. SCARBOROUGH: Pass the witness.

CROSS-EXAMINATION

BY MS. BARLOW-SPARKMAN:

Q Mr. Barr, you referred to a stack of documents that were introduced at the temporary injunction hearing and that those documents had been obtained during the temporary receivership. Is that correct?

A That's what they purported to be, yes, ma'am.

Q In fact, Mr. Barr, those exhibits that were introduced and admitted into evidence at the temporary injunction order were Exhibits Nos. 29 through 31 and 33 through 39, a total of nine exhibits. Is that correct?

A I'll take your word for it. I remember a stack of about eight inches tall of documents that had receivership certificates on them.

Q And at that temporary injunction hearing, Mr. Barr, isn't it correct that there were a total of 59 exhibits introduced by the State and admitted into evidence at that hearing? Isn't that correct?

A I don't know.

Q Do you have any reason to believe that that's not correct?

A Yes, I do. I believe there was 39 exhibits, total. The number 39 sticks in my mind.

Q That is because, Mr. Barr, Exhibit Nos. 29 through 31 and 33 through 39 were exhibits introduced and admitted, and those nine exhibits were in fact obtained

during the temporary receivership of Corporate Underwriters and Risk Managers.

There were, in fact, 59 exhibits introduced and admitted into evidence at the temporary injunction hearing. Does that help refresh your recollection?

A It does not refresh my recollection, but I'll take you word that there was a number of exhibits admitted at th hearing.

Q And Mr. Barr, your client took the order up on appeal did it not, with respect to the entry of the temporar injunction?

A We appealed the interlineation, the handwritten languag on the order. We agreed to an injunction at tha hearing, Ms. Barlow-Sparkman. And so we appeale the gratuitous interlineation.

Q On appeal to the Third Court of Appeals, you argue did you not, that Exhibits 29 through 31 and 33 throug 39 -- again, we're talking about the documents that we obtained during the temporary receivership -- shou have been suppressed, that they were wrongful admitted into evidence?

A I believe that we hired Mike Hatchell from the Ran law firm, and I believe that those points were argue yes.

Q And is it not correct, Mr. Barr, that the Third Court Appeals determined that Exhibits 1, 2 and 3 alon which were not documents obtained during t temporary receivership, provided sufficient cause f the Trial Court's ruling, and they, in fact, affirmed t Trial Court's ruling?

A I don't agree with that.

Q Okay. Well, you would agree, Mr. Barr, that we could submit to this Court today and this Court could take judicial notice of the opinion of the Third Court of Appeals. It was Cause No. 3-89-212-CV in a case captioned Risk Managers International, Inc., Et al. versus The State of Texas?

A Well, certainly the judge can take notice of an appeal and of an opinion of a court.

Q Mr. Barr, you testified earlier that you have represented in the past Risk Managers International, Inc. and Herschel Hancock. Correct?

A Correct.

Q And have you in the past or do you now represent in any capacity Corporate Underwriters, Limited?

A I represent Herschel Hancock, Risk Managers International and Corporate Underwriters in the defense of a bad faith suit filed at the -- I believe it's in Bexar County, Texas.

And I believe there's a suit filed in Harris County, but I'm not certain.

Q Do you generally represent Corporate Underwriters, Limited in advising them on matters other than a specific lawsuit that has been filed?

A I absolutely do not. I simply defend them on cases filed.

Q Have you provided advice to Corporate Underwriters, Limited about this case that has been filed, the one that we're here for today?

A What advice I have provided Corporate Underwriters, Limited with respect to what case would be an attorney/client privilege, and I would invoke that on behalf of the client.

THE COURT: It's noted.

MS. BARLOW-SPARKMAN: No further questions for Mr. Barr.

MR. SCARBOROUGH: That's all. Your Honor, at this time we would offer Movant's No. 3, which has been previously been filed with the Court. But it's, I believe in November, the First Amended Affidavit of Herschel Hancock.

THE COURT: Movant's 3 is admitted.

(Movant's Exhibit No. 3 was
(offered and received into
(evidence.

MS. BARLOW-SPARKMAN: I would note, Your Honor, that with the admission of Movant's No. 3 the State does not agree with the statements that Mr. Hancock has made in that affidavit that was filed several months ago.

As you know, each time Mr. Hancock has appeared he has taken the Fifth Amendment and has not testified on any of these issues.

MR. SCARBOROUGH: We have nothing further. We rest on the motion.

THE COURT: All right, thank you.

MS. SHAUNESSY: Your Honor, I have one witness I would like to call.

THE COURT: All right.

MS. SHAUNESSY: Your Honor, I would like to call Gary Johnson to the stand, please.

(Witness sworn.)

GARY JOHNSON,

called as a witness by the Respondent, having been duly sworn, testified as follows.

DIRECT EXAMINATION

BY MS. SHAUNESSY:

Q Mr. Johnson, could you please state your name?

A Gary Johnson.

Q Briefly describe your educational background.

A I have a BBA in accounting and finance.

Q Where are you presently employed?

A At the Texas Department of Insurance, in Tax Administration.

Q What position do you have at the Texas Department of Insurance in the Tax Division?

A I'm the director of that division.

Q How long have you held that position?

A I was recently appointed to that position. I've been in Tax for about three and a half years.

Q What functions does the Tax Division perform?

A We collect premium taxes, maintenance taxes, miscellaneous fees and assessments from licensed companies, from surplus lines agents, from independently-procured taxes, as well as unauthorized insurers.

Q What are your job duties at the Texas Department of Insurance?

A I administer the processing of all tax forms administration, as well as the review of all taxes, tax forms that are presented. We also conduct audits and examinations of companies that are both licensed in the state, as well as companies that are not licensed in the state. We also do examinations of surplus lines agents.

Q Are you familiar with the unauthorized insurance premium taxes in the Texas Insurance Code, Article 1.14-1, Section 11?

A Yes, I am.

Q Are you familiar with the independently-procured insurance taxes in Section 12 of Article 1.14-1 of the Texas Insurance Code?

A Yes, I am.

Q Who pays the premium tax under Article 1.14-1, Section 11?

A The unauthorized insurer does.

Q And when you say "unauthorized insurer," does that mean the insurance company?

A That's correct.

Q Who pays the tax under Section 12, the independently-procured tax?

A The insured does.

Q When you say "insured," what does that mean?

A The policyholder.

Q What information is needed in order to determine the amount of the unauthorized insurance premium tax under Texas Insurance Code Article 1.14-1, Section 11?

A We would need to know the exact amount of premiums received during a calendar year, which would be the same as a tax year. We would need to know the amount of premiums received on a cash basis.

We would also need to know if it was allocated properly to the State of Texas or whether it was properly allocated and reported to another state.

Q Okay. Do the commissions paid to insurance agents - are they included in premium tax calculations?

A No, they are not.

Q I would now like to hand you Exhibit No. 2, if I might. I would ask you to look at Exhibit No. 2.

Does Exhibit No. 2 tell you the amount of premium taxes which the insurance company actually received from Employers Select Management, Incorporated, which is the named insured on Page No. 1 of Exhibit 2?

A No, there's no indication here that this is the amount of premiums that were paid on this policy. I can elaborate on that if you would like.

Q That would be fine.

A Okay. First of all, the policy period is over two tax years.

MR. BARR: Judge, I'm going to object. That's nonresponsive to the question.

THE COURT: The objection is overruled.

BY MS. SHAUNESSY:

Q This is over two calendar or tax years. The policy period could have also been terminated.

The policy could have been terminated before the end of the period, therefore these premiums may never have been paid. Therefore if you look at this, there could be an overstatement of premiums.

By the same token, there could have been an adjustment in the policy premiums that were not indicated here.

Q Does Exhibit No. 2 indicate the exact date on which the premiums were received by the insurance company?

A No, it does not.

Q I would like to direct your attention to Page 1 of Exhibit No. 2, where it talks about the claims deposit fund. The first page of Exhibit No. 2, please.

A The first page, this one right here (indicating)?

Q No, I'm sorry.

A The top sheet, marked Exhibit 1?

Q Yes, marked Exhibit 1.

A Okay.

Q I would direct your attention to Paragraph No. 3(b) of Exhibit 2, Page 1. What does the 14 percent fee represent?

A I'm not exactly sure what it is, but I would venture that it is a -- it's part of this agreement, but it is a premium payment.

I'm not sure if it's part of the replenishment of the account or what, but I would consider it premiums.

Q If you were going to conduct an audit relating to the premium taxes, would you want to know all of the information relating to the claims deposit fund so you could interpret whether or not the claims deposit was, in fact, part of the premium or not?

A That's correct.

MS. SHAUNESSY: At this time, Your Honor, I would like to have marked as the next exhibit the order of March 10th regarding the discovery of financial information of Defendant Risk Managers.

THE COURT: Is the order in the file?

MS. SHAUNESSY: Yes.

THE COURT: Then I take judicial notice of it.

(Respondent's Exhibit No. 1
(was marked for
(identification.

BY MS. SHAUNESSY:

Q I would like to hand you what's been marked as Respondent's No. 1.

MS. SHAUNESSY: I was going to have the witness testify that the documents as ordered would be relevant in determining the premium taxes.

Q Mr. Johnson, please look through Respondent's Exhibit No. 1. And with the exception of Interrogatories 13, 14, 16, are all of the documents or questions requested in the order of March 10th - would those responses help in determining the premium taxes which would be owed under Article 1.14-1, Section 11?

A Well, specifically on Interrogatory No. 11, that's the identification of all premiums which were received by Risk Managers, definitely we would need that in order to determine when the premiums were received, during what tax period, and in order to determine when the taxes were due.

Q Okay.

A You said except 13, 14, and 16?

Q Yes.

A So 15, "Identify all bank or savings and loan accounts of any type in the name and/or for the benefit of Risk Managers International, Incorporated, giving the account number."

This would be something that we would normally review on all tax cases.

Q As would the rest of the interrogatory and requests for production, would you normally look at those types of documents in determining if premium taxes were properly paid?

A Yes, that's correct.

MS. SHAUNESSY: No further questions, Your Honor.

CROSS-EXAMINATION

BY MR. SCARBOROUGH:

Q Mr. Johnson, looking at Interrogatory No. 11, if you had that information, that's what you would need to calculate the premium tax, isn't it?

A That is one of the things we'll need.

Q Couldn't you do it from that and that, alone?

A We couldn't prove that these were absolutely the premium taxes due for any given period without further review of supporting documents.

Q I'm not talking about proving. But couldn't you calculate it from the information listed in Interrogatory No. 11? That is, "All premiums received by Risk Managers with respect to risks resident, located or to be performed in Texas for insurance policies on which Corporate Underwriters was represented to be the insurer."

A We could make that initial calculation, yes.

Q Okay. Now, you haven't seen, have you, sir, the audit? You were in the courtroom when Ms. Alicia Curran testified?

A Yes.

Q And you heard her mention the audit that has been produced?

A Well, yes.

Q You haven't seen that, have you?

A No, I have not.

MR. SCARBOROUGH: No further questions.

MR. BARR: I have a couple, Mr. Johnson.

CROSS-EXAMINATION

BY MR. BARR:

Q It is the person buying the insurance under independently-procured insurance who has the obligation to pay a tax to the State of Texas in the amount of 3.85 percent of the amount of premium they pay. Is that correct?

A That's correct, if it's independently-procured.

Q Correct. Now, how many audits have you done in your department of independently-procured insurance in the last year?

A I would say that we probably do about 20 a month.

Q Of independently-procured?

A Yes.

Q Now, in these 20 a month that you do, do you audit the premiums of the insurer, or the insured?

And nothing the State has said changes the fact that the order they obtained was done so ex parte, when they had full knowledge of lawyers representing the various parties at the time they went to get it. And that's uncalled for.

Thank you.

THE COURT: Okay. Have you-all worked out the wording on this temporary injunction order against Corporate?

MR. WASHBURN: I believe we have, Your Honor.

THE COURT: All right. And will you-all clue me in if you want my signature on it?

MS. SHAUNESSY: Yes, sir. We have to add the date of the permanent injunction and that no bond is required and take out the word "now" in the last line.

MR. WASHBURN: And reflect the fact that the permanent injunction hearing is set for October 5th.

MS. SHAUNESSY: October 5, 1992 at 9:00 a.m., and that no bond is required of the State.

THE COURT: A true and correct copy which is attached as Exhibit A, incorporated, is now in effect. I'm signing this. You-all make the interlineations here.

MS. SHAUNESSY: Thank you, Your Honor. We'll take care of that.

THE COURT: First of all, with respect to the Rule 13 motion and the motion, in essence, for a protective order with respect and sanctions with respect to the material received during the receivership, the Court finds once again that this original receivership and this original lawsuit was not

groundless and not brought in bad faith and for the purpose of harassment.

With respect to the due process rights of Mr. Hancock, there is no evidence before the Court now or ever that the receivership took any of the personal documents or in any way violated the constitutional rights of Mr. Herschel Hancock.

With respect to the Lunsford ruling of this Court with respect to the financial information of Corporate Underwriters, once again the Court orders and compels the production of that financial information, relying on the scope of the Texas Rules of Civil Procedure, Rule 166b, that discovery is not only for relevant information, but that which might tend to lead to the discovery of relevant information.

The Court makes a specific finding that that which is requested under the financial - and based on the case law that's been provided to the Court, that this falls within the proper scope of discovery.

With respect to the compulsion of requiring the production of certain information by Corporate Underwriters, the Court, in addition to its previous rulings, now wishes to add the following:

Corporate Underwriters has been incorporated by the Turks & Caicos Islands under a specific provision of the ordinance.

If one takes a look at the corporate ordinance of 1981 -- and I believe the other one is 1979 -- Turks & Caicos has a scheme for regulating and registering corporations that are within its jurisdiction.

In part, the ordinances make a great deal of sense in comparison to the Uniform Business Corporations Acts that are being modeled and adopted by the states.

It is interesting to note that if the corporation is doing business within Turks & Caicos Islands, then Turks & Caicos is very specific about the regulation of that corporation.

For instance, if the corporation is doing business within the islands, it's noted within the ordinances that the directors of the corporation can have unlimited liability, such that if the corporation goes defunct they look at the directors for recompense.

Similarly, the members; that is, the stockholders of a corporation also have unlimited liability.

The corporations that do business within Turks & Caicos and are incorporated under the Turks & Caicos have to keep certain registers. They have to keep what we would call a stock register, and every stock transaction is open and available for inspection during business hours to members of that corporation.

There is also required to be kept a register of mortgage debentures and other types of debts of the corporation, also available for inspection.

There has to be a list of directors and officers that gives their address and what business they're required to do. And there's a penalty for not keeping accurate registers.

There has to be an annual meeting for the benefit of the stockholders. This is if they are doing business within the jurisdiction of Turks & Caicos.

Now, specifically Section 200 allows a corporation -- first of all, they have to certify that the purposes of the corporation are not to be accomplished within Turks & Caicos; that is, they're going to do business outside of Turks & Caicos. In this instance, the state of Texas.

Under Sections 201 and 200, they are exempted; a corporation that certifies that "I'm not doing business in Turks & Caicos, but I wish to be registered or certified in Turks & Caicos," is exempted from the following provisions of the ordinance:

Sections 6 through 8, 40, 42, 44, 45, 46, 52, 53, 54, 56; Sections 25, Sub (3); 25, Sub (4); 26, Sub (1); 26, Sub (3); 36, 37, 38, 92(c), and 207 through 217, et seq.

What's exempted if you're doing business outside of Turks & Caicos but are incorporated within Turks & Caicos? Well, you no longer have to keep a list of your members.

You no longer have a register of stock transactions that's open and available for inspection. You're no longer under a penalty to keep an accurate register.

You no longer have to keep a register of your debts. You no longer have to keep a list of your directors and officers and what business they do and what address they are.

Not only that, you no longer have a penalty for not keeping such a list. You don't have to have an annual meeting.

You give a statement which says that the directors have limited liability as opposed to unlimited liability.

You no longer have to have a list of your stockholders. You no longer have to have a register of your members, and you no longer have to turn only in an annual list of your members to the registrar of the Turks & Caicos corporation.

In addition, it's noted that in Sections 207 and 217, if you're a foreign corporation; that is, if you are a Texas corporation and you wish to do business in the Turks & Caicos Islands, you have one month to register.

You have to provide a list of your directors, a registered agent, and you have to pay an annual $250 Turks & Caicos fee, paid annually.

In short, the Turks & Caicos Islands has a system for foreign corporations doing business within Turks & Caicos, that they require specific disclosure of particular information. And yet Turks & Caicos, once a corporation certifies that it wishes to do business outside of Turks & Caicos, provides a haven for secret corporations that are not effectively regulated by any jurisdiction. And this is unconscionable.

The Turks & Caicos Islands, in this supposed confidentiality, provide no effective regulation for a corporation ostensibly certified and registered in the Turks & Caicos Islands as long as they certify "We're not going to do our dirty business here."

The Court has relied upon, among other things in its decision to require the disclosure of information in violation of Section 201 of the 1981 Ordinance of Corporations, the fact that Corporate Underwriters has conducted business - shown by the evidence beyond a preponderance of the evidence to have conducted business within the state of Texas, to have kept a bank account where its monies were stored in the state of Texas, to issue checks within the state of Texas, in short, to have done business within the state of Texas.

If that's the case, then they need to comply with the laws of the state of Texas.

Motion for reconsideration of the Court's previous ruling is denied. The material is ordered produced instanter. Both the financial information, the information -- One last thing that the appellate court should take note of.

The provision of 200 of the Turks & Caicos Islands is that it doesn't even have to be material that was developed in the Turks & Caicos Islands. It says that the information is

confidential even if it originates somewhere else and is brought into the Turks & Caicos Islands.

So information in this case that was made, designed, produced in the state of Texas is taken into the umbrella of the Turks & Caicos Islands.

We want our information and we want it now. Thank you-all.

(Recess.)

THE STATE OF TEXAS)

COUNTY OF TRAVIS)

I, Ms. Betty Haygood, Official Court Reporter, 250th District Court, Travis County, Texas, do hereby certify that the above and foregoing record contains a true and correct transcription of all the proceedings directed by counsel to be included herein in Cause No. 471,568, all of which occurred in open court or in chambers.

I further certify that this transcription truly and accurately reflects the exhibits, if any, offered by the respective parties.

I further certify that costs for the preparation of the said transcript are in the reasonable sum of $515.00.

WITNESS MY HAND this the 10th day of June, 1992.

\S\

Betty Haygood, CSR-RPR
250th District Court
Travis County, Texas

Certificate No. 471
Date of Expiration of Current Certification: 12/31/92
Business Address: P.O. Box 1748, Austin, Texas 78767
Telephone Number: 512/473-9321

NO. 471,568

THE STATE OF TEXAS and STATE BOARD OF INSURANCE, Plaintiffs,	§	IN THE DISTRICT COURT
VS.	§	
RISK MANAGERS INTERNATIONAL, INC.; HERSCHEL HANCOCK, Individually and as Officer of RISK MANAGERS INTERNATIONAL, INC.; NYLE LARGE, Individually and as Agent of RISK MANAGERS INTERNATIONAL, INC.; and CORPORATE UNDERWRITERS, LTD., Defendants.	§	OF TRAVIS COUNTY, TEXAS 299TH JUDICIAL DISTRICT

ORDER DENYING DEFENDANTS' JOINT MOTION PURSUANT TO RULE 13 REGARDING PLAINTIFFS' PETITION AND DISCOVERY FROM RECEIVERSHIP AND SUPPLEMENTAL MOTION FOR RECONSIDERATION

On the eighth day of June, 1992, this Court heard the Defendants' Joint Motion Pursuant to Rule 13 Regarding Plaintiffs Petition and Discovery From Receivership and

Supplemental Motion for Reconsideration ("Motion"). Defendants Corporate Underwriters, Ltd., Risk Managers International, Inc., and Herschel Hancock appeared at the hearing by and through their respective counsel of record. Plaintiffs the State of Texas and the State Board of Insurance appeared at the hearing by and through the Attorney General for the State of Texas. Defendant Nyle Large joined in the Motion, but did not appear at the hearing.

Mr. Large, Mr. Hancock, Risk Managers International, Inc., and Corporate Underwriters, Ltd. will be referred to as "defendants." The State of Texas and the State Board of Insurance will be referred to as "plaintiffs."

After considering the evidence admitted at the hearing and the argument of counsel,

IT IS HEREBY ORDERED ADJUDGED AND DECREED THAT DEFENDANTS' MOTION IS DENIED.

IT IS FURTHER, ORDERED, ADJUDGED, AND DECREED that Corporate Underwriters, Ltd. must produce instanter to the Court for in-camera inspection all responses and responsive documents requested by plaintiff State of Texas' First Amended Interrogatories, First Amended Request for Production and Second Amended Set of Requests for Admissions.

Further, IT IS ORDERED, ADJUDGED, AND DECREED, that Herschel Hancock and Risk Managers International, Inc. must produce instanter all documents and answer instanter all interrogatories as ordered by this Court on March 10, 1992 and April 14, 1992 pursuant to the following orders: (1) Order of March 10, 1992 Regarding the Discovery of Financial Information of Defendant Herschel Hancock; (2) Order of March 10, 1992 Regarding the Discovery of Financial Information of Defendant Risk Managers International, Inc.; (3) Order of April 14 1992 Denying Defendant Risk Managers

International's Motion for Reconsideration; and (4) Order of April 14, 1992 Denying Defendant Herschel Hancock's Motion for Reconsideration.

SIGNED on this the _____ day of June, 1992 NUNC PRO TUNC June 8, 1992.

/S/
JUDGE JOHN K. DIETZ

AGREED AS TO FORM:

/S/
LINDA I. SHAUNESSY
Attorney for
Plaintiffs

/S/
JOHN BARR/ALICIA CURRAN
Attorney for Herschel
Hancock as an individual

/S/
TERRY SCARBOROUGH
Attorney for Risk Managers International, INC. and Herschel Hancock as President of Risk Managers International, Inc.

/S/
HECTOR DeLEON
Attorney for Corporate Underwriters, Ltd.

/S/
MARC RICHMAN
Attorney for Nyle Large

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ORDER DENYING DEFENDANTS' JOINT MOTION PURSUANT TO RULE 13 REGARDING PLAINTIFFS' PETITION AND DISCOVERY FROM RECEIVERSHIP AND SUPPLEMENTAL MOTION FOR RECONSIDERATION